

**U.S. Environmental Protection Agency
Statement for the Record
Submitted to the Committee on Indian Affairs
United States Senate**

Legislative Hearing on S. 2165, S. 2716, S. 2912, S. 3019, S. 3044, S. 3099, and S. 3100

June 24, 2020

Chairman Hoeven, Vice Chairman Udall, and members of the Committee, this statement for the record summarizes the U.S. Environmental Protection Agency's (EPA) important work to improve access to safe drinking water on tribal lands, and provides EPA's technical assistance comments on S. 3044, the Western Tribal Water Infrastructure Act. The Administration does not have an official position on S. 3044.

EPA's Commitment to Improving Tribal Drinking Water Infrastructure

Since passage of the Safe Drinking Water Act (SDWA) in 1974, EPA and our implementing partners, including tribes, have made tremendous progress in providing clean and safe water to our Nation's citizens. In the 1970s, more than 40 percent of our Nation's drinking water systems failed to meet even the most basic health standards. Today, over 93 percent of community water systems meet all health-based standards, at all times. Congress passed SDWA to protect public health, including by regulating public water systems. SDWA requires EPA to establish and enforce standards that public drinking water systems must follow. EPA delegates primary enforcement responsibility (also called primacy) for public water systems to states and tribes if they meet certain requirements.

EPA also has a critical role in helping to support investments in our nation's drinking water infrastructure. In particular, the Drinking Water State Revolving Loan Fund (DWSRF) was established by the 1996 amendments to SDWA. The DWSRF is a financial assistance program to help water systems achieve the health protection objectives of SDWA. As described further below, specific funding for tribal projects is provided through a set-aside from the DWSRF.

EPA has specifically identified drinking water compliance and drinking water infrastructure priorities within EPA's fiscal year (FY) 2018-2022 strategic plan and associated long-term performance goals. In particular, EPA has set goals for reducing the number of community water systems out of compliance with health-based measures and for increasing the amount of non-federal dollars leveraged by EPA's water infrastructure finance programs.¹

Assessing Tribal Drinking Water Needs

SDWA requires EPA to assess the nation's public water systems' infrastructure needs every four years and use the findings to allocate DWSRF capitalization grants to states and tribes. As part of this assessment, EPA documents the 20-year capital investment needs for tribes. The survey reports infrastructure needs that are required to protect public health. These include projects to ensure compliance with SDWA that are eligible for funding under the Drinking Water Infrastructure Grants

¹ See <https://www.epa.gov/sites/production/files/2019-09/documents/fy-2018-2022-epa-strategic-plan.pdf>

Tribal Set-Aside Program (hereafter “Tribal Set-Aside Program”), discussed in greater detail below. EPA’s most recent drinking water infrastructure needs survey and assessment estimated the total 20-year need for tribal water systems to be \$3.1 billion.²

The Drinking Water Infrastructure Grants Tribal Set-Aside Program

The Tribal Set-Aside Program helps address the unique challenges tribes face in providing reliable access to safe drinking water and provides annual funding for federally recognized tribes for public drinking water systems.³ The Tribal Set-Aside Program funds come from a 2 percent set-aside of the DWSRF program provided in EPA’s annual appropriations. In FY 2020, Congress appropriated \$22.52 million for the Tribal Set-Aside Program. Any federally recognized tribe is eligible to receive a grant.

Community water systems and non-profit, non-community water systems that serve a tribal population are eligible to have projects funded, in whole or in part, with Tribal Set-Aside Program funds. If the Indian Health Service (IHS) agrees, tribes may request that IHS receive the project funds to administer the project. Funds can be used for planning and construction expenditures at community or non-profit non-community drinking water systems that serve tribes. Furthermore, the SWDA states that funds must be used to address the most significant threats to public health. SDWA further directs that funds may be used only for projects that facilitate compliance with the National Primary Drinking Water Regulations or will further the health protection objectives of SDWA. These funds cannot be used for compliance monitoring, operation, or maintenance of a system.

EPA Regions are responsible for working with the tribes and other federal agencies like IHS to identify, prioritize, and select projects to receive funding from the Region’s share of the program funds. Projects are selected in close coordination with other federal agencies to most effectively leverage existing authorities and to ensure efficient use of resources. Prioritization of projects is especially important given the highly varied needs across tribal communities.

Examples of projects funded by the Tribal Set-Aside Program are:

- Rehabilitation or development of sources of drinking water;
- Installation or upgrade of treatment facilities;
- Installation or upgrade of storage facilities;
- Installation or replacement of transmission or distribution pipes; or
- Replacement of aging water system infrastructure.

Projects can also be funded to develop project engineering reports, engineering design work, and project administration. The 2016 Water Infrastructure Improvements for the Nation Act (WIIN Act) expanded the activities that are now eligible for Tribal Set-Aside Program funds to include training and operator certification programs.⁴

EPA uses a formula to allocate Tribal Set-Aside Program funds to EPA Regions annually. The formula provides a base amount of 2 percent of the total annual set-aside to each Region. EPA Regions receive

² EPA’s sixth Drinking Water Infrastructure Needs Survey and Assessment, available at

https://www.epa.gov/sites/production/files/2018-10/documents/corrected_sixth_drinking_water_infrastructure_needs_survey_and_assessment.pdf.

³ <https://www.epa.gov/tribaldrinkingwater/drinking-water-infrastructure-grants-tribal-set-aside-program>

⁴ <https://www.epa.gov/tribaldrinkingwater/amendments-drinking-water-infrastructure-grants-program-required-water>

the remaining fund allocations based on their percentage share of the tribal drinking water system "needs." The drinking water system "needs" come from the most current statistics reported in two different surveys: EPA's Drinking Water Infrastructure Needs Survey and Assessment, described earlier, and IHS's Sanitation Deficiency System.

Additional EPA Funding Sources for Tribal Drinking Water Projects

In addition to the Tribal Set-Aside Program, EPA has several other potential sources of funding for tribal water infrastructure projects.

Water Infrastructure Improvements for the Nation Act (WIIN Act) Grant Programs

The 2016 Water Infrastructure Improvements for the Nation Act (WIIN Act) addresses, supports, and improves America's drinking water infrastructure. Included in the WIIN Act are three new drinking water grants that promote public health and the protection of the environment. Within the WIIN Act section 2105 lead infrastructure grant program, EPA has set aside \$3 million to fund tribal drinking water infrastructure projects using funding appropriated in FY2018-FY2020.⁵ EPA is also implementing a tribal grant program under section 2104 of the WIIN Act that may include infrastructure investments necessary to comply with the SDWA.⁶

The Water Infrastructure Finance and Innovation Act (WIFIA) Program

The Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) established the WIFIA program, a federal credit program administered by EPA for eligible water and wastewater infrastructure projects. The WIFIA program accelerates investment in our nation's water infrastructure by providing long-term, low-cost supplemental loans for regionally and nationally significant projects. Tribes are eligible borrowers under WIFIA and may apply for loans to finance projects of at least \$5 million.

EPA drinking water infrastructure activities in the Columbia River Basin

From FY 2013 to FY 2019, the Tribal Set-Aside Program awarded \$2.6 million, through interagency agreements with IHS, to 6 different tribes for 11 drinking water infrastructure projects in the Columbia River Basin to provide water supply and storage, improve source water, support planning and design of infrastructure, and improve pumps and treatment.

Shoshone Bannock – Fort Hall Community Water System

After the discovery that the aquifer that underlies the reservation was contaminated with ethylene dibromide and nitrate (both in excess of the national primary drinking water standards) in the early 1990s, EPA and other funding agencies helped pay for the construction of a large community water system that provides access to safe water to the residents of the reservation.

⁵ More information is available at <https://www.epa.gov/tribaldrinkingwater/wiin-act-section-2105-reducing-lead-drinking-water-tribal-grant-program>.

⁶ More information is available at <https://www.epa.gov/tribaldrinkingwater/wiin-act-section-2104-assistance-small-and-disadvantaged-communities-tribal>

Simmasho Water System – Warm Springs

After the revisions to the arsenic rule in 2000, the community needed treatment or a new source of drinking water. Through cooperative efforts with IHS, the Department of Housing and Urban Development (HUD) and the Tribe, EPA funded the construction of a new source (wells), a water treatment building and a water transmission main needed to deliver a safe water supply to the community. EPA funded 66.3 percent of the \$3.37 million project which resulted in the elimination of a violation of a national primary drinking water standard (arsenic).

EPA has been heavily engaged in providing technical assistance and compliance assistance to the Confederated Tribes of the Warm Springs, starting in November 2018. Through the Interagency Agreement for Public Water System Supervision, EPA funds IHS Utility Consultants. The utility consultant staff funded by IHS have spent multiple weeks onsite providing hands-on training, troubleshooting and technical assistance to Warm Springs' operators. Also, EPA has regularly participated in funding summits at Warm Springs (June 2019, September 2019 and February 2020). The organization and event management of the first two meetings was supported by EPA at the request of the Tribe. The June and September 2019 meetings involved significant federal participation.

EPA drinking water infrastructure activities in the Upper Missouri River Basin

Over the last seven fiscal years, the Tribal Set-Aside Program awarded \$17 million, through an interagency agreement with IHS, to 10 different tribes for 30 drinking water infrastructure projects in the Upper Missouri River Basin to upgrade or install new drinking water storage tanks, replace or consolidate water mains and pipes (including lead service lines and intakes), and install new filters and treatment technology.

In March 2020, EPA Region 8 convened a workgroup of multiple federal agency regional leaders to discuss Drinking Water/Wastewater/Solid Waste issues in Indian country in Wyoming and Montana. Leaders from over 8 federal agencies and administrations began a collaborative, regional-level discussion to address the concerns regarding systemic violations of these systems, and to identify agency resources that may help address these continuous violations.

EPA drinking water infrastructure activities in the Upper Rio Grande Basin

In FY 2019 and FY 2020, the Tribal Set-Aside Program awarded \$2.5 million, through an interagency agreement with IHS, to 6 different tribes for 7 drinking water infrastructure projects in the Upper Rio Grande Basin to fix corrosion issues in water storage facilities, help meet drinking water standards for arsenic, fix operational problems by updating electronic control systems, and construct additional water supply facilities for reserve and backup capacity to meet design standards.

S. 3044 – the Western Tribal Water Infrastructure Act

In section 2001 of America's Water Infrastructure Act of 2018 (AWIA), Congress authorized EPA to create an Indian Reservation Drinking Water Program that would fund projects to connect, expand, or repair existing public water systems on Indian reservations in the Upper Missouri River and Upper Rio Grande Basins. EPA has not received appropriations to carry out this program.

S. 3044 would amend the Indian Reservation Drinking Water Program to include projects in the Columbia River Basin and make several additional technical changes. As noted earlier, EPA supports efforts to address drinking water challenges on tribal lands and is interested to work with the Committee on how to best target federal efforts toward this important goal. EPA has two technical comments on S. 3044:

- EPA would need a specific appropriation from Congress to carry out the Indian Reservation Drinking Water Program; and
- S. 3044 describes a specific number of projects located in specific watersheds. Based on the authorization of appropriations in section (d) of \$30 million, it would be challenging for EPA to fund 10 projects in each of the three Basins. Projects vary substantially by size and scope and this framework may severely constrain EPA in making project decisions.

Conclusion

Thank you for the opportunity to submit this written statement for the record for today's hearing. EPA remains committed to its ongoing work to improve access to safe drinking water on tribal lands, and we appreciate Congress's attention to this important issue.